



City of Galveston

CAPITAL PROJECTS STAFF REPORT

July 10, 2020

To: Brian Maxwell, City Manager
Hon. Mayor and City Council Members

From: J. Dudley Anderson, Building Program Manager

RE: Consider for approval a proposal from Braun Intertec Corporation in the amount of \$42,383.00 to perform Construction Material Testing for 73rd Street Reconstruction from Heards Lane to Ave N ½. Authorizing the City Manager to execute all necessary documents upon final approval by the City Attorney.

I. Background

- A. The design and reconstruction of 73rd Street was included in the City of Galveston Capital Improvement Plan.
- B. This project includes rebuilding the roadway, replacement of aged water and sewer lines, sidewalks and ADA ramps and a new outfall along Ave N ½.
- C. On May 25, 2017, the City Council approved LJA Engineering to perform engineering design in the amount of \$175,000.00.
- D. The project was advertised for Construction Phase Services in October 2019 as RFP 19-30 and received three (3) responsive proposals.

Score:

Main Lane Industries	1598
Angel Brothers	1567
Fused Industries	1364

Main Lane Industries received the highest score.

- E. Main Lane Industries was awarded the contract on February 27, 2020 in the amount of \$2,043,134.00.
- F. To ensure construction is performed consistent with the engineering specifications, construction material testing by an independent engineering firm is required.
- G. City requested a proposal from Braun Intertec Corporation that was prequalified by City Council in September 2018 to perform geotechnical engineering services.





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II. Current Situation

- A. Braun Intertec Corporation provided a proposal for \$42,383.00 to perform construction material testing.
- B. Braun Intertec Corporation is available to perform at City's request.

III. Impact or ramifications

This project is part of the City's continued efforts to improve the infrastructure throughout Galveston.

IV. Alternatives in order of priority

- A. Approve the proposal from Braun Intertec Corporation in the amount of \$42,383.00 to perform Construction Material Testing for 73rd Street Reconstruction from Heards Lane to Ave N ½.
- B. Do not approve the proposal.

V. Recommendation

Approve the proposal from Braun Intertec Corporation in the amount of \$42,383.00 to perform Construction Material Testing for 73rd Street Reconstruction from Heards Lane to Ave N ½.





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VI. Fiscal Impact Report

Requested by:

J. Dudley Anderson
Building Program Manager

Funding Source:

GO Bonds

Total Cost of Implementation

\$ 42,383.00

Respectfully Submitted,

J. Dudley Anderson
Building Program Manager



MATERIALS TESTING SERVICES AGREEMENT

73rd Street Reconstruction from Heards Lane to Ave N ½

This Materials Testing Services Agreement ("Agreement") is hereby entered into and effective on _____ between the City of Galveston, Texas, (the "City" or "Client") and Braun Intertec Corporation ("Braun Intertec" or "Consultant"), a Corporation for the rendition of materials testing services described herein for the following project. References to the City/Client and Braun Intertec /Consultant, jointly shall be referred to as the "Parties" to this Agreement.

NOW THEREFORE, the parties do mutually agree as follows:

1. Scope of Services (work): The scope of materials testing services subject to this Agreement is described in **Exhibit A** and includes the following documents attached hereto and incorporated herein for all purposes:
 - Project - 73rd Street Reconstruction from Heards Lane to Ave N ½
 - RFQ # **18-04** (Braun Intertec Prequalified by City Council in September 2018 for 3 years)
 - **Exhibit A** = Consultant Cost Estimate; Project Information; Scope of Services; Estimated Testing Schedule; and Proposal/CMT Acceptance Form.
2. Time of Performance: The services set forth in Consultant's proposal (**Exhibit A**) shall commence upon the issuance of a Notice to Proceed. Due to the nature and extent of the project, the work is expected to be completed within (240) calendar days of the issuance of the Notice to Proceed (NTP).
3. Independent Contractors: The parties are independent Contractors as to each other. Nothing in this Agreement shall be construed as creating any agency or employment relationship. Neither party shall make any representations tending to create an apparent or implied agency or employment relationship. Neither party has the authority to act for the other or to create obligations or debts binding on the other. Neither party shall be responsible for any obligations or expenses incurred by the other.
4. The City does not waive or relinquish any governmental immunities or defenses on behalf of itself and its trustees, officers, employees, or agents as a result of the execution of this Agreement and performance of the functions or obligations described herein. Nothing herein shall be construed as creating any personal liability on the part of any officer, or director, or employee or representative of the City.
5. Standard of Care: The standard of care for all related services performed or furnished by Braun Intertec under this agreement will be performed in a manner consistent with the level

of care and skill ordinarily exercised and used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

Consultant shall perform the services described in this Agreement in accordance with all applicable federal, state, county, city and/or other governmental entity statutes, regulations, standards, codes and ordinances, including but not limited to all Federal Specifications and Standards and the City Code of the City of Galveston, and all applicable requirements of the current edition reference standards of the AASHTO, ACI, AISC, ASTM, and AWS. No pleas of misunderstanding will be considered on account of ignorance thereof. Consultant shall likewise impose the same obligations contained in this Agreement upon all of its sub-consultants, if any. The Consultant shall be responsible for the accuracy of its services and shall promptly make necessary revisions resulting from its errors, omissions or negligent acts without compensation.

6. Access to Information and Site Access: It is agreed that all information, data, reports and records and maps as are existing, available and necessary for the carrying out of the work outlined above shall be furnished to Braun Intertec by the City and its agencies. The City and its agencies will cooperate with Braun Intertec in every way possible to facilitate the performance of the work described in the Agreement.
7. Appropriations: The obligations of the City to make payment under this Agreement are expressly subject to appropriations by the City of funds that are lawfully available to be applied to such purpose.
8. Compensation: The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed **Forty Two Thousand, Three Hundred and Eighty Three, (\$42,383.00) Dollars.** Invoices are submitted by Braun Intertec each month (not necessarily falling on the first or last day of the month). City shall notify "Braun Intertec in writing, of any and all objections, if any, to an invoice within ten (10) days of the date of invoice. Otherwise, the invoice shall be deemed proper and acceptable by the City. Amounts indicated on invoices are due and payable immediately upon receipt. City's account will be considered delinquent if Braun Intertec does not receive full payment within thirty (30) days after the invoice date. Parties shall attempt to resolve any payment disputes within sixty (60) days or the matter may be submitted to mediation.
9. The compensation sum includes reimbursement for all labor, administrative, overhead, and all other expenses associated with the Project, including (but not limited to) all expenses incurred by Consultant in the performance of the work. The City shall not be responsible for payment to Braun Intertec for any additional services or expenses not specifically included in **Exhibit "A"**, except upon execution of an amendment to this Agreement in writing by both parties. Expenses incurred due to Contractors unpreparedness shall be invoiced directly to the Contractor.

10. INDEMNIFICATION: FOR CONSIDERATION RECEIVED, Braun Intertec shall, to the extent permitted by law, indemnify, save and hold the City of Galveston harmless, including City's officers, and, employees, from any claims, actions, lawsuits, proceedings, damages, loss, judgments, liabilities or expense on account of damage to property and injuries, including death, to the extent caused by any negligent act, error or omission of Braun Intertec or those acting under Braun Intertec's supervision or control. Braun Intertec shall not be responsible, however, for any loss, damage, liability or expense on account of damage to property and injuries, including death, by which may arise from the negligence of the City. **Braun Intertec shall comply with the requirements of all current applicable laws, rules and regulations and shall indemnify and hold harmless the City and its agency members from and against the failure to comply with those laws, and shall assume full responsibility for payments of Federal, State and local taxes on contributions imposed or required under the Social Security, worker's compensation and income tax laws.**
11. Construction: This Agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Galveston County, Texas. Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement. In any case, if one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
12. Termination of Agreement for Cause: If, through any cause, Braun Intertec shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Braun Intertec shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to Braun Intertec of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by Braun Intertec under this Agreement shall, at the option of the City, become property of the City and Braun Intertec shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, Braun Intertec shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by Braun Intertec, and the City may withhold any payments to Braun Intertec for the purpose of set-off until such time as the exact amount of damages due the City from Braun Intertec is determined.

13. Termination for Convenience of the City: The City may terminate this Agreement at any time by giving at least ten (10) days' notice in writing to Braun Intertec. If the Agreement is terminated by the City as provided herein, Braun Intertec will be paid for the time provided and expenses incurred up to the termination date. If this Agreement is terminated due to the fault of Braun Intertec, Paragraph eleven shall apply.
14. Modification: No change in the terms of this Agreement shall be binding unless it is in writing and signed by an authorized representative of both parties.
15. Force Majeure: No party to this agreement shall be deemed in violation if it is prevented from timely performing any of its obligations by reason of labor disputes, acts of God, acts of the public enemy, acts of superior governmental authority, or other circumstances for which the party is not responsible or which is not in its control.
16. Proof of Insurance: Braun Intertec shall maintain certain types of insurance protection throughout the duration of the project. All insurance policies are to be issued by an insurance Braun Intertec authorized to do business in the State of Texas, using an insurance Company with an A.M. Best rating of a B+ or better.
17. Required Insurance: Commercial general liability insurance, naming the City of Galveston as an additional insured and as certificate holder, and waiving subrogation per the contractual requirements of this project; Automobile Liability Insurance, Worker's Compensation Insurance and Professional Liability Insurance. Limits are to be equal to or greater than:
- a. **Commercial general liability insurance:**
 - \$2,000,000 general liability (includes products and personal, etc.)
 - \$1,000,000 fire damage
 - \$1,000,000 automobile damage
 - \$500,000 workers compensation employers' liability
 - Statutory limits for workers compensationInsurance coverage shall be on an "occurrence basis"
 - b. **Professional Liability Insurance: \$1,000,000 per claim and \$2,000,000 Aggregate.** Consultant shall submit evidence at the time of execution of this Agreement that it has in full force and effect professional liability errors and omissions insurance. Consultant shall maintain such insurance in full force and effect throughout the duration of this Agreement and thereafter for a period of one year.
18. Assignability: Braun Intertec shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City. Unless specifically stated to the contrary in any written consent

to assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

19. Reports and Information: Braun Intertec, at such times and in such forms as the City may require, shall furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement. Any reuse of the work product on extensions of this project or on any other project without Braun Intertec's prior written consent shall be at the re-user's sole risk and without liability to Braun Intertec.
20. Consultant shall submit written reports to the City including a general description of the inspections and tests performed with identification of the specific Project area/materials involved, all data required to be recorded under AASHTO, ACI, AISC, ASTM and AWS Standards and other standard test methods employed, identification of the standard sampling and test methods utilized, all findings and test results, and an appendix of terminology and symbols used, and in accordance with **Exhibit A**.
21. Findings Confidential: To the extent permitted by law, all of the reports, information, data, etc., prepared or assembled by Braun Intertec under this Agreement are confidential and Braun Intertec agrees that they shall not be made available to any individual or organization without the prior written approval of the City.
22. Copyright: No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of Braun Intertec.
23. Compliance with Local, State and Federal Laws: This Agreement shall be construed under and in accordance with the laws of the State of Texas, with jurisdiction in the courts of the State of Texas and venue in Galveston, County regardless of where the obligations of the parties were performed. By execution of this Agreement, the parties agree to subject themselves to the jurisdiction of the Courts of the State of Texas in all matters relating to or arising out of this Agreement or the Work.
24. Notices: All notices required or permitted under this Agreement shall be in writing and shall be deemed given when delivered in person or three days after deposit in the United States Mail, postage prepaid, addressed to the party's address reflected at the end of this Agreement. A party's notice address may be changed from time to time by that party's providing written notice to the other. A copy of the notice(s) shall be sent to:

City Attorney
City of Galveston
823 Rosenberg, Room 203
P.O. Box 779
Galveston, Texas 77553

Braun Intertec
Kevin Williams
Operations Manager
2522 Texas Avenue
Texas City, Texas 77590

With Copy To:
Braun Intertec Corporation
Attn: Law Department
11001 Hampshire Ave S.
Minneapolis, MN 55438

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate on the day and year first above written.

CITY OF GALVESTON, TEXAS

BRAUN INTERTEC CORPORATION

BY: _____
NAME: Brian Maxwell
TITLE: City Manager
DATE: _____

BY: [Signature]
NAME: Bryan Landers
TITLE: Business Unit Leader
DATE: July 8, 2020

ATTEST:

By: _____
Janelle Williams,
City Secretary

APPROVED AS TO FORM:

City Attorney's Office

THE STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

BEFORE ME, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed same for and as the act and deed of "Braun Intertec Intertec Corporation" as the _____ (title of signing agent) thereof, and for the purposes and consideration therein expressed and in the capacity thereon stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 17th day of, July, 2020.



[Signature]
Notary Public In and For
The State of Texas

EXHIBIT A



Braun Intertec Corporation
10819 W. Fairmont Pkwy
La Porte, TX 77571

Phone: 409.948.8494
Web: braunintertec.com

June 11, 2020

Proposal: QTB122052

Richard Baxter
City of Galveston
823 Rosenberg Street
Galveston, Texas 77550
Office Phone: (409) 797-3660
Email: rbaxter@galvestontx.gov

Re: 73rd Street Reconstruction
Galveston, Texas 77550

Braun Intertec Corporation is pleased to submit this cost estimate to provide construction materials testing services for soils, concrete and asphalt testing at the referenced site. We understand that we have been selected for this project based on our qualifications.

Our Understanding of Project

We understand that this project will include:

- A. Soils testing and classification for fill materials, proctors, and compaction testing.
- B. Concrete testing services.
- C. Asphalt testing services.

Available Information

- Plans and specifications provided by Galveston County, Texas.

Overview of Procedures and Staff Qualifications

Communications

Our technicians will communicate the results of their tests to the Project Manager at the end of each day. It is important for our technicians/PM to develop a working relationship with the project team. We will be in contact with the team periodically to review the work being performed and to request clarifications and direction on any item that may require it.

Laboratory Testing Personnel

We will commit that each laboratory technician assigned to this project will be properly trained to conduct the required testing, so that the test results can be determined on site and evaluated once the required laboratory testing is completed.

Scope of Services

Soil Related Services

- Perform laboratory Proctor tests to determine the maximum standard or modified proctor dry densities and optimum moisture contents of prospective backfill and fill materials
- Test in-place materials for adherence to site specifications

Concrete Related Services

- Perform testing on fresh concrete in the field to establish acceptance criteria
- Perform laboratory compressive strength testing of the concrete samples

Asphalt Related Services

- Perform thickness verifications as required by project specifications
- Perform rolling patterns at the beginning of the project and as needed
- Observe the placement and compaction of the HMA
- Perform density test per project specifications to verify compaction average is between 92 and 97 percent
- Record and document temperature reading per the project specifications ensuring maximum temperatures are not exceeded and that rolling operations are performed at acceptable temperature ranges

The qualified technicians will perform the specified laboratory testing services on a call out basis as scheduled by the client.

Cost

The actual cost of our services will be based on the actual units or hours expended to meet the requirements of the project.

Our work may extend over multiple invoicing periods. As such, for work that is performed during each invoicing period, we will submit partial progress invoices.

Overtime rate of 1.5 times the regular hourly rate will be charged for hours worked greater than 8 hours per day, or greater than 40 hours per week. All laboratory and field services performed on Saturday or Sunday will be billed at 1.5 times the regular hourly rate. All services performed on holidays will be billed at 2.0 times the regular rate.

It is difficult to project all of the services and the quantity of services that may be required for any project. If services are required that are not discussed herein, we will provide them at the rates shown in the below table or, if not shown, at our current Schedule of Charges.

Description of Service	Unit	Quantity	Rate	Cost
Soils Observation & Testing				
Senior Engineering Technician (4 Hr. minimum)	Hour	120	\$52.00	\$6,240.00
Nuclear Density Gauge, per day	Day	30	\$60.00	\$1,800.00
Standard Proctor Test (ASTM D698)	Each	4	\$155.00	\$620.00
Atterberg Limits: LL and PL (ASTM D4318), per sample	Each	3	\$65.00	\$195.00
Sieve analysis with 200 Wash (ASTM D1140), per sample	Each	3	\$55.00	\$165.00
Compressive Strength of Cement Sand, per sample	Each	20	\$60.00	\$1,200.00
Sample Pick Up	Each	3	\$100.00	\$300.00
CMT Trip Charge	Day	30	\$70.00	\$2,100.00
Concrete Testing				\$12,620.00
Senior Engineering Technician (4 Hr. minimum)	Hour	50	\$52.00	\$2,600.00
Concrete Cylinder Pick Up	Each	4	\$100.00	\$400.00
CMT Trip Charge (as needed)	Day	10	\$70.00	\$700.00
Concrete Cylinders 4x8 (ASTM C39)	Each	50	\$20.00	\$1,000.00
Bituminous Testing				\$4,700.00
Senior Engineering Technician (4 Hr. minimum)	Hour	180	\$52.00	\$9,360.00
Coring 2 man Crew (4 Hr. minimum)	Hour	20	\$200.00	\$4,000.00
Nuclear Density Gauge, per day	Day	58	\$60.00	\$3,480.00
Core Density, per test	Each	15	\$45.00	\$675.00
Core Thickness, per test	Each	84	\$22.00	\$1,848.00
CMT Trip Charge	Day	30	\$70.00	\$2,100.00
Project Management				\$21,463.00
Project Assistant	Hour	20	\$60.00	\$1,200.00
Project Manager	Hour	20	\$120.00	\$2,400.00
Total Cost Estimate				\$3,600.00
Project Total				\$42,383.00

NOTES:

1. Additional tests or services performed not listed in this fee schedule will be quoted upon request.

General Remarks

We will be happy to meet with you to discuss our proposed scope of services further and clarify the various scope components. We appreciate the opportunity to present this proposal to you. If you find this proposal acceptable, *please sign and return a copy to us in its entirety.*

The proposed fee is based on the scope of services described and the assumption that our services will be authorized within 30 days, and that others will not delay us beyond our proposed schedule. We include the Braun Intertec General Conditions, which provide additional terms and are a part of our agreement.

To have questions answered or schedule a time to meet and discuss our approach to this project further, please call Kevin Williams at 409-948-8494 or email at kwilliams@braunintertec.com.

Sincerely,
BRAUN INTERTEC CORPORATION



Kevin Williams
Operations Manager



William Bass III
Project Manager

Attachments:
General Conditions

The proposal is accepted, and you are authorized to proceed.

Authorizer's Firm

Authorizer's Signature

Authorizer's Name (please print or type)
